

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
_____	)	

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),<sup>1</sup> through the undersigned and pursuant to Federal Communications Commission (FCC) Rules 1.415 and 1.419,<sup>2</sup> hereby provides comments on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board)<sup>3</sup> concerning the definition of services supported by the federal universal service program pursuant to Section 254 of the Communications Act of 1934, as amended (the Act).<sup>4</sup> USTA agrees with the Joint Board's conclusions as to those services that it expressly rejected for addition to the list of supported universal services. With respect to equal access and the Joint Board's inability to reach a consensus recommendation, USTA asks the FCC to forgo adding equal access to the list of supported universal services. As stated below, though, USTA's position is not a wholesale endorsement of the rationale offered by those members of the Joint Board that oppose adding equal access to the list of supported universal services.

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<sup>1</sup> USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>2</sup> 47 C.F.R. §§ 1.415 and 1.419.

<sup>3</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 03J-2, Recommended Decision (rel. Apr. 2, 2003) (*Recommended Decision*).

<sup>4</sup> 47 U.S.C. § 254.

## DISCUSSION

The Joint Board is granted the authority under section 254(c) of the Act,<sup>5</sup> to recommend to the FCC whether to alter or modify the list of supported universal services. In December of 2000, the FCC requested that the Joint Board “review the definition of the ‘core’ services supported by the Commission’s high-cost and low-income universal service support mechanisms under section 254(c)(1) of the Act.”<sup>6</sup> Thereafter, the Joint Board released a *Public Notice* seeking comment as to whether the list of supported universal services should be expanded to include: advanced services, soft dial tone, intrastate or interstate toll, expanded toll, expanded area service, and prepaid calling plans.<sup>7</sup> In addition, the *Public Notice* sought comment on whether the definition of voice grade access should be modified.

USTA’s comments to the *Public Notice* emphasized that section 254(c) of the Act requires that four statutory criteria must be considered before additional services can be added to the list of those services supported under Section 254. The criteria requires consideration of whether services to be added: “(a) are essential to education, public health, or public safety; (b) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (c) are being deployed in public telecommunications networks by telecommunications carriers; and (d) are consistent with the public interest, convenience, and necessity.”<sup>8</sup> Further, USTA

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<sup>5</sup> 47 U.S.C. § 254(c).

<sup>6</sup> *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 25257, 25258 at ¶ 3 (2000).

<sup>7</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, CC Docket No. 96-45, Public Notice, FCC 01-J-1 (Aug. 21, 2001) (*Public Notice*).

<sup>8</sup> See United States Telecom Association Comments at 2 (citing to 47 U.S.C. § 254(c)) (USTA Comments).

advocated that the Joint Board should retain the core services on the list<sup>9</sup> for universal service support, and USTA opposed further expansion of the list of supported universal services.

Here, the Joint Board recommends that the list of supported universal services not be expanded. But with respect to equal access, the lack of a recommendation to add equal access to the list of supported universal services was not the result of a decision supported by a majority of the Joint Board. Rather, it was as a consequence of the inability of the Joint Board to achieve a majority position for or against adding equal access to the list of supported universal services.<sup>10</sup>

**Advanced Services, Soft Dialtone, Intrastate Toll, Interstate Toll, Expanded Area Service, And Pre-Paid Calling Plans Should Not Be Added To The List of Supported Universal Services**

USTA agrees with the Joint Board that advanced services, soft dialtone, intrastate toll, interstate toll, expanded area service, and pre-paid calling plans should not be added to the list of services supported by the federal universal service program. USTA agrees that these services do not satisfy “the statutory criteria contained in section 254(c) of the Act, and that the public interest would not be served by expanding the scope of universal service [to include these services] at this time.”<sup>11</sup> Action to expand the existing list of universal services would be particularly imprudent now as the FCC and the industry work through pending universal service proceedings to ensure that support for existing universal services is appropriately distributed in accordance with Section 214(e) of the Act<sup>12</sup> and that such support remains specific, predictable and sufficient.

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<sup>9</sup> The current core services are: Single-party service; Voice grade access to the public switched network; Dual Tone Multifrequency signaling or its functional equivalent; Access to emergency services; Access to operator services; Access to interexchange services; Access to directory assistance; and Toll limitation services for qualifying low-income consumers.

<sup>10</sup> *Recommended Decision* at ¶ 68.

<sup>11</sup> *Id.* at ¶ 1.

<sup>12</sup> 47 U.S.C. § 214(e).

Currently pending before the FCC are universal service proceedings concerning long-term modifications to the universal service contribution mechanism;<sup>13</sup> high cost support and the eligible telecommunications carrier designation process;<sup>14</sup> a remand proceeding from the U.S. Court of Appeals for the 10<sup>th</sup> Circuit (addressing issues of sufficiency of support, the appropriate benchmark for support and federal inducements to states for state-funded universal service support mechanisms);<sup>15</sup> and a recently released recommended decision of the Federal-State Joint Board on Universal Service proposing modifications to the Lifeline and Link-Up programs.<sup>16</sup> Adding new services to the list of supported universal services now would only create additional stress on an increasingly fragile program. The FCC must bring greater long-term stability to the universal service high cost support mechanism before it considers adding new services to it. Stability is essential if the FCC is to fulfill its statutory mandate to have a specific, predictable and sufficient federal mechanism for the preservation and advancement of universal service.<sup>17</sup> Stability can only be achieved by promptly and successfully completing the several proceedings now pending before the FCC that address important issues that are fundamental to the long-term health of the high cost support

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<sup>13</sup> *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72 (rel. Dec. 13, 2002) (Second Further Notice).

<sup>14</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 02-307 (Nov. 8, 2002).

<sup>15</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001).

<sup>16</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 03J-2, Recommended Decision (rel. Apr. 2, 2003).

mechanism such as: 1) the adoption of an equitable, broad-based and competitively neutral contributions mechanism; 2) reform of the eligible telecommunications carrier designation process; and 3) the identification and adoption of inducements for states that do not have state universal service mechanisms to establish such mechanisms.<sup>18</sup>

**Equal Access Should Not Be Added To  
The List Of Supported Universal Services**

USTA also opposes the addition of equal access to the list of supported universal services. USTA agrees with those Joint Board members that oppose adding equal access to the list of supported universal services that “equal access obligations were established to address competitive concerns in the interexchange market – at a time when the competitive landscape was quite different from that of today – rather than to promote the universal availability of basic telephone services.”<sup>19</sup> USTA also agrees that the public interest would not be served by adding equal access to the definition of universal service nor by requiring CMRS carriers to provide equal access.<sup>20</sup> Further, USTA agrees that “equal access fails to satisfy the statutory criterion of being essential to education, public safety, or public health.”<sup>21</sup> USTA disagrees, though, with these Joint Board members in their apparent disregard of the competitive disadvantage that exists for local exchange carriers (LECs) that are required to provide equal access while CMRS carriers are free of equal access obligations.<sup>22</sup> Although, it is correct that the absence of an equal access requirement for eligible telecommunications carriers (ETCs) does not impair universal service.<sup>23</sup> While USTA generally

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<sup>17</sup> See 47 U.S.C. § 254(b)(5).

<sup>18</sup> Section 254(b)(5) mandates that that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.” [emphasis added].

<sup>19</sup> *Recommended Decision* at ¶ 69.

<sup>20</sup> *Id.* at ¶ 72.

<sup>21</sup> *Id.* at ¶ 73.

<sup>22</sup> *Id.* at ¶ 72.

<sup>23</sup> *Id.* at ¶ 73.

disagrees with those Joint Board members that support including equal access among supported universal services, USTA agrees that “[t]o not require the same of all ETCs advantages wireless ETCs over wireline ETCs.”<sup>24</sup> Further, USTA agrees that “it is important to establish fair and equal rules for all ETCs at this time, because consistent with the overall growth in wireless subscribership, it appears that wireless ETCs will soon begin to receive a substantial share of high-cost support from the universal service fund.”<sup>25</sup> As these Joint Board members point out, “during 2002 new wireless carriers have qualified as ETCs and high-cost support for wireless carriers has more than quadrupled to \$64.4 million on an annual basis.”<sup>26</sup>

CMRS carriers are increasingly marketing their services as an alternative to wireline voice telephony. The competitive disparity that exists between CMRS carriers that are exempt from equal access pursuant to section 332(c)(8) of the Act<sup>27</sup> and LECs that, independent of their ETC status, are required to provide equal access is unfair and unwarranted. The solution, though, is not to include equal access as a supported universal service – and therefore an obligation of all ETCs – rather, it is to relieve all LECs of the obligation to provide equal access. USTA believes that to ensure regulatory parity among telecommunications providers, the FCC should eliminate equal access obligations for LECs as it has been required by statute to do for CMRS carriers. This is not a matter that can or should be addressed in the context of this universal service proceeding. It is an issue of fundamental fairness and competitive neutrality that goes beyond universal service. It requires the FCC to commence a rulemaking proceeding specifically addressing the continuing obligation of LECs to provide equal access. USTA requests that the FCC commence such a proceeding. It is unnecessary for any telecommunications carrier to be required to provide equal access. With CMRS

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<sup>24</sup> *Id.* at ¶ 82.

<sup>25</sup> *Id.* at ¶ 84.

<sup>26</sup> *Id.* [emphasis added].

penetration at over 130 million subscribers and growing, it is grossly unfair for LECs to bear the burden of equal access.

### CONCLUSION

For the reasons set forth above, USTA supports the retention of the existing list of core supported universal services. USTA opposes the expansion of the list at this time to include any new supported universal services. Moreover, competitive neutrality requires that LECs be relieved of the obligation to provide equal access, and the FCC should commence a rulemaking proceeding to consider the expeditious repeal of the LEC equal access requirement.

Respectfully submitted,  
UNITED STATES TELECOM ASSOCIATION



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<sup>27</sup> 47 U.S.C. § 332(c)(8).

**CERTIFICATE OF SERVICE**

I, Meena Joshi, do certify that on April 14, 2003, the aforementioned Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

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